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Subject: Pesticides & Toxic Substances Law News for October 3, 2017



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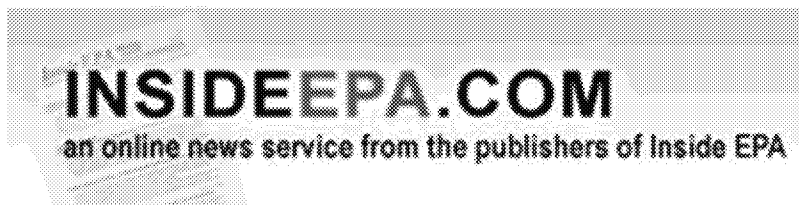
PODCAST: Celebrate SCOTUS Day With Parts Per Billion

For attorneys, today is like Christmas, July 4th, and Super Bowl Sunday all rolled into one. It's the first day of the Supreme Court's new term.

News

Chemical Testing
Correction

A Sept. 20 story, "EPA Non-Animal Chemical Testing Strategy Imminent," incorrectly said that the strategy would be released to a review panel Nov. 3. It will be publicly released at that time. The online version has been corrected.



TRUMP'S EPA: Agency at a crossroads — Complete coverage

Inside EPA's **Risk Policy Report**, 10/03/2017
<https://insideepa.com/newsletters/risk-policy-report>

TSCA Tracker

<http://insideepa.com/specials/tsca-tracker>

Latest News

Agency Economists Say 2-1 Order 'Doubles' Benefit-Cost Analysis Work

EPA and other government economists are facing significant challenges implementing President Donald Trump's order requiring agencies to repeal two rules for every new one, saying the order doubles the workload of regulatory impact analysis and raises other uncertainties, though some economists call such new directives part of the job.

EPA Hedges On GAO Calls To Bolster Enforcement Of Lead & Copper Rule

EPA is generally agreeing with the Government Accountability Office (GAO) that better data on where lead service lines are located would improve the agency's oversight of the Safe Drinking Water Act Lead and Copper Rule (LCR), though the agency stops short of committing to GAO's call to require states to report the data and take other steps to help enforce the rule.

Pesticide Reviews Advance But EPA Attainment Of Court Schedule Uncertain

Trump administration officials are reviewing staff-level draft biological opinions of the first pesticides to undergo a new process for assessing risks to endangered species but it is unclear whether they will complete their reviews and forward them to EPA in time to meet a year-end court deadline for issuing the final versions.

Judge's Order For New EPA FOIA Search May Boost Herbicide Finding Suit

A federal district court judge is ordering EPA to expand its Freedom of Information Act (FOIA) search in response to environmentalists' request for documents backing the agency's conclusion that a controversial herbicide will not harm listed species, with environmentalists hoping to use the documents in a separate suit challenging the finding.

Daily Feed

EPA formally launches industry 'smart sector' program

"Regulatory policies will be more effective when they are informed by actual conditions in regulated sectors," one top industry official says of the effort.

Our most read: a new IRIS, EPA's state reviews, what will replace CPP

Also: critics wonder how Pruitt spending issues will impact EPA policy and court rejects indefinite stay of coal-ash rule.



SUPREME COURT

Justices wade into water rule, show interest in Va. mining

Amanda Reilly, E&E News reporter

Published: Monday, October 2, 2017



U.S. Supreme Court. Phil Roeder/Flickr

The Supreme Court today asked for the Trump administration's views on Virginia's moratorium on uranium mining, a sign that justices are interested in a mining company's plea to overturn the ban.

But the high court otherwise declined to add several other environmental and energy petitions, including two fisheries cases, to its docket. They were among a long list of denials issued as justices began their October 2017 term.

This Supreme Court term promises major battles over controversial topics, including partisan gerrymandering, cellphone privacy and whether a cake shop can decline to service a same-sex wedding. The court may also weigh President Trump's immigration executive orders.

But the environmental law docket is so far relatively light. Headlining it is a fight over the correct legal venue for challenging the Obama administration's Clean Water Rule. Justices are scheduled to hear oral arguments next week in the case.

In the mining case, Virginia Uranium Inc. is appealing a recent decision by the 4th U.S. Circuit Court of Appeals upholding the state's long-standing moratorium on uranium extraction. Justices asked the solicitor general to file briefs responding to the company's petition.

The central legal question in the case is whether the federal Atomic Energy Act pre-empts Virginia's law. Virginia Uranium argues the state has taken on the regulation of radiological safety hazards resulting from activities — the milling of uranium and management of tailings — that are under the purview of the Nuclear Regulatory Commission.

"The commonwealth's prohibition of uranium development transgressed the limits imposed by the AEA," the company said in court documents.

The 4th Circuit in February issued a split decision, finding that state leaders cited as defendants were immune from litigation and that Virginia was the "paramount proprietor" of minerals within its jurisdiction ([Greenwire](#), Feb. 21).

Another mining ban

This is the second time this year that justices have asked the Trump administration to weigh in on a state mining ban. In May, they asked for the solicitor general's views in a case brought by a part-time prospector, Brandon Rinehart, seeking to knock down California's ban of a method of mining gold from streambeds.

Rinehart challenged a 2009 prohibition on suction dredge mining, a practice that involves sucking up sediment from streambeds, running it through a sluice and returning it to the stream.

California criminally prosecuted him for using the practice to mine a claim in Plumas National Forest in the northern part of the state.

The California Supreme Court in August 2016 ruled that the state can ban mining if it wants. The Trump administration has yet to file briefs in the case ([Greenwire](#), May 15).

Rinehart is represented by the conservative law firm Pacific Legal Foundation, which often brings claims to the Supreme Court on behalf of property owners.

While Rinehart's case is pending, justices today declined to hear another PLF case claiming that the North Carolina town of Emerald Isle took the beach in front of a family's house without just compensation. PLF attempted to argue that the town illegally extended the public trust doctrine to the dry beach in front of the home.

Fisheries

It takes the votes of four justices to accept a petition. Today they declined hundreds of cases, as is typical at the start of a new term.

Among the denials were Alaska's appeal of a ruling by the 9th U.S. Circuit Court of Appeals requiring NOAA to create a new plan for managing state salmon.

The court found the agency couldn't exclude historical net fishing areas of the Cook Inlet from its fishery management plan (FMP) for salmon.

Alaska, which has long managed salmon in the Cook Inlet, argued the court was wrong because the Magnuson-Stevens Fishery Conservation and Management Act doesn't require the federal government to prepare an FMP for a fishery that doesn't need one.

The Trump administration, though, urged justices to pass on the case, arguing NOAA was "well-equipped" to issue a new FMP that includes Cook Inlet ([Greenwire](#), May 10).

The Supreme Court also declined to revive litigation brought by Northeast fishermen challenging a federal program requiring most groundfish boats to pay for their own at-sea watchdogs.

At issue is NOAA's requirement that, beginning January 2016, fishermen pay for a multimillion-dollar, at-sea monitoring program because of a tight federal budget.

Fishermen who voluntarily joined a "sector" — or a group that shares fish quotas — must have at-sea monitors who tag along on fishing trips to ensure federal rules are followed.

NOAA partially reversed course last year and estimated it would be able to reimburse 85 percent of industry costs in 2016 and 60 percent in 2017.

New Hampshire fisherman David Goethel and Northeast Fishery Sector 13, one of the groundfish sectors, argued in their lawsuit that NOAA essentially made them join a sector by making it the "only viable economic option."

But the 1st U.S. Circuit Court of Appeals dismissed the case, finding that the fishermen had failed to file the lawsuit within a required 30-day period under the Magnuson-Stevens Act. The fishermen told the Supreme Court they "deserve a day in court" (*Greenwire*, July 13).

Other cases

Justices declined to revive a recycling company's claims that Solo Cup Co. and other major manufacturers of polystyrene food service products conspired with the American Chemistry Council to prevent its closed-loop, sustainable recycling method.

The legal question in the case concerned the standard that courts should use when deciding whether to grant summary judgment motions in antitrust cases.

Evergreen Partnering Group Inc. argued that the 1st Circuit, which ruled in favor of the manufacturers, applied the wrong standard based on a "significant misinterpretation" of precedent.

A case brought by Ohio residents over leasing land for oil and gas drilling likewise reached a dead end. The residents argued the Muskingum Watershed Conservancy District illegally leased lands that were to be used solely for recreation, conservation and reservoir development.

They were challenging a 6th U.S. Circuit Court of Appeals decision favoring the watershed district. But the Supreme Court declined to reconsider the ruling.

Justices also brought to a close fishing advocates' attempts to scuttle a federal permit for the closure of Rollover Pass, a man-made channel Texas dug out in 1955 to allow fish and salt water to more easily access the East Bay from the Gulf of Mexico.

On the other hand, a class-action lawsuit against Stream Energy alleging a pyramid scheme will move forward in lower court after the Supreme Court declined to take up the company's appeal of a decision certifying the class.

Stream sells electricity through a multilevel marketing program. The 5th U.S. Circuit Court of Appeals certified a class of 230,000 plaintiffs who say they've collectively lost more than \$87 million after signing up as "independent associates" under the company's program.

FEDERAL WORKFORCE

Trump ends union-management councils

Kevin Bogardus, E&E News reporter

Published: Monday, October 2, 2017

This article was updated at 2:15 p.m. EDT.

President Trump disbanded labor-management forums across the federal government with a stroke of the pen last Friday.

Trump's executive order dissolved groups intended to bring federal worker unions and agency managers together to discuss how to improve government services.

The president's order ends the agency-level forums as well as a national council that includes the director of the Office of Personnel Management and deputy director for management of the Office of Management and Budget, other top-level federal officials as well as the heads of several major unions.

The executive order said the labor-management groups were a drain on taxpayer funds without leading to increased collaboration with the federal workforce.

"The National Council on Federal Labor-Management Relations (Council) and related agency-level labor-management forums have consumed considerable managerial time and taxpayer resources, but they have not fulfilled their goal of promoting collaboration in the Federal workforce," the order says.

"Public expenditures on the Council and related forums have produced few benefits to the public, and they should, therefore, be discontinued."

The order issued Friday specifically revokes an executive order issued by President Obama in 2009, which created the labor-management forums.

Trump's order also says that it does not affect any collective bargaining agreements.

Federal worker unions were disappointed by Trump's order.

"This is an ominous sign for the future of federal labor-management relations," National Treasury Employees Union President Tony Reardon said in a statement today.

"For an administration that is trying to reduce operational costs and make agencies run more efficiently, to state that it is too time-consuming and costly to meet with its own employees is self-defeating."

NTEU also said that Trump's order will not terminate agency-level labor-management forums that were established under existing collective bargaining agreements. The union said those groups have been productive, giving federal employees a chance to voice their concerns.

As the head of NTEU, Reardon served on the national council now discontinued by Trump. American Federation of Government Employees President J. David Cox also served on the council and expressed dismay over the order.

"Federal employees are on the frontlines of hurricane recovery efforts and are taking on increased responsibilities as most of President Trump's political positions remain unfilled," Cox said in a statement.

"Now is a time for more dialogue between rank-and-file workers, their managers, and administration leadership — not less. Removing opportunities for these conversations to occur is yet another attempt to silence the voice of working people and their labor representatives."

REGULATIONS

Trump cancels rollbacks speech due to Vegas shooting

Maxine Joselow, E&E News reporter

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President Trump canceled his speech on regulations this morning to address the shooting in Las Vegas. C-SPAN

Vice President Mike Pence this morning discussed the Trump administration's efforts to roll back regulations and cut red tape at an event closed to press.

Pence delivered the speech instead of President Trump, who was addressing the nation about the shooting in Las Vegas last night.

Trump was initially scheduled to give a speech that would be open to the news media and live-streamed on the White House website.

The president had been widely expected to tout the cost savings achieved by rolling back dozens of Obama-era regulations (*E&E Daily*, Oct. 2). He had also been expected to highlight a January executive order requiring agencies to revoke two regulations for every new one.

Neomi Rao, administrator of the Office of Information and Regulatory Affairs, said during a Friday call with reporters that rollbacks have resulted in \$300 million in cost savings. She did not specify how OIRA arrived at that number.

Following Pence's remarks, agencies are still scheduled to hold listening sessions on their regulatory reform efforts, said White House spokeswoman Natalie Strom.

The agencies holding listening sessions include the Energy and Interior departments, but not U.S. EPA. The sessions will likely focus on another executive order establishing regulatory reform task forces at agencies.

Speaking from the Diplomatic Reception Room of the White House, Trump called for the country "to find unity and peace" in the aftermath of the Las Vegas shooting, in which at least 50 people were killed and hundreds more were injured.

The president had an opportunity to tout rollbacks to the National Association of Manufacturers on Friday.

"We are cutting regulations at a pace that has never even been thought of before — not even thought of," Trump told the trade association. "This is a groundbreaking campaign and involves every department and agency across our government."

Industry groups cheered Pence's remarks, while public interest groups condemned the elimination of crucial protections for the environment and public health and safety.

"We support the administration in its mission to achieve regulatory reform that will allow the paper and wood products industry to innovate, invest, create jobs and compete at home and around the globe," said American Forest & Paper Association President Donna Harman, who attended the speech, in a statement.

"The vice president may tout it as an accomplishment that the administration has derailed so many public health and safety protections," said Andrew Rosenberg, president of the Center for Science and Democracy at the Union of Concerned Scientists, in a [statement](#). "For the rest of us, though — particularly for low-income neighborhoods and communities of color — this is no victory."

HOUSE

Scalise, back in the Capitol, recounts near-death ordeal

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In his first interview since a June 14 shooting nearly killed him, House Majority Whip Steve Scalise (R-La.) said it was a "miracle" he survived.

"A gunman came out with a lot of artillery just hellbent on killing a lot of us, and we're just out there playing baseball, sitting ducks, and he just started firing away," Scalise, 51, said in a CBS "60 Minutes" interview yesterday. "If you said to us, at the end of this, the only person who would be dead would be the shooter, no one would have believed it."

Scalise was with a group of Republican lawmakers that morning at a baseball field in Alexandria, Va., when James Hodgkinson opened fire with a rifle. Hodgkinson was targeting GOP members.

Scalise was hit in the hip. The bullet shattered his pelvis and femur, and he nearly died from internal injuries.

"The first thing that came to mind, I prayed to God: Please, don't make my daughter have to walk up the aisle alone," Scalise said. "And obviously, after that, I prayed that I could see my family again."

He recalled Rep. Mike Conaway (R-Texas) telling him to hang on. Rep. Brad Wenstrup (R-Ohio), a former Army combat surgeon, applied tourniquets while Scalise waited for a helicopter.

Scalise returned to the chamber last week and got a standing ovation. In an address, he thanked the Capitol Police officers who were the first to shoot back at Hodgkinson and called for bipartisan cooperation.

"When everybody goes into their separate corners, it's just real easy to demonize the other side instead of saying, 'OK, how can we come together and figure out how to get done what's important for the country?'" he said. "Hopefully, this might have pulled us a little bit closer together" (Mike DeBonis, [Washington Post](#), Oct. 1). — NB

FEDERAL AGENCIES

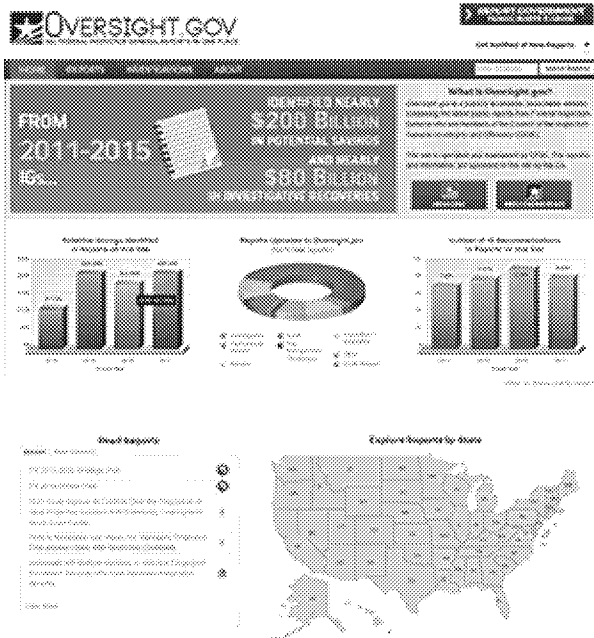
IGs launch website, boosting public access to reports

[Kevin Bogardus](#), E&E News reporter

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Inspectors general across the federal government launched a website today to showcase the agency watchdogs' work.

The Council of the Inspectors General on Integrity and Efficiency's [Oversight.gov](#) lets visitors search inspector general reports from across the government, more than 5,800 so far.



The new Oversight.gov homepage.

That number of available reports will rise as the agency watchdogs issue new audits and add them to the website.

"The public should have easy access to information about their government, and Oversight.gov is a big step in this direction," said Justice Department Inspector General Michael Horowitz, who is also chairman of CIGIE, in a statement.

"This new website makes the work of the IG community more accessible, and it demonstrates the critical role Inspectors General play in combatting waste, fraud, and abuse, and holding government officials accountable for their management of taxpayer money."

Visitors will be able to search for reports by keyword, date and report type, as well as the agency inspector general who issued them. Users can also click on a map of the United States to find reports by state.

New inspector general reports will be posted to the website, which visitors can be alerted to on its own Twitter feed. In addition, the website includes contact information for each inspector general's complaint hotline.

DRINKING WATER

Neighbors of chemical dump report cancer, thyroid problems

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Neighbors of an old tannery dump site in Belmont, Mich., have reported cancer and thyroid problems, and tests of their wells have shown elevated levels of toxic chemicals.

Wolverine World Wide Inc., a global footwear company that makes Hush Puppies, dumped hazardous waste sludge from its tannery at the site throughout the 1960s.

Most contaminated is the well of Sandy Wynn-Stelt, whose husband died in March 2016 of liver cancer at age 61. The Michigan Department of Environmental Quality said state toxicologists had never seen such high levels of perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA) in a private drinking water well.

Local and state officials started asking to test the neighborhood well water in July this year.

"You lose your husband and it's the worst thing on Earth," Wynn-Stelt said. "And in July, I get these government people walking up my driveway saying, 'We think you've got poisoned groundwater.'"

Wolverine said in a statement that it understands residents' "frustration and anxiety."

"At the same time, there are no simple solutions or shortcuts for determining exactly what is happening at these sites or for setting the most effective path forward," it said. "On multiple occasions, including [a] recent town hall meeting, Wolverine has stressed its commitment to thorough testing and to ensuring residents have water they can trust during this process and into the future" (Garret Ellison, *Grand Rapids Press*, Oct. 1). — MJ

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